

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOYCE WILSON

:

Plaintiff,

:

09 Civ. 2150 (SHS) (HBP)

-against-

:

REPORT AND  
RECOMMENDATION

BOARD OF ELECTION BRONX NEW YORK,  
et al.

:

Defendants.

:

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PITMAN, United States Magistrate Judge:

TO THE HONORABLE SIDNEY H. STEIN, United States Dis-  
trict Judge,

The pro se plaintiff commenced this action on March 9, 2009 by filing a summons and complaint. My review of the file in August, 2009 disclosed that no proof of service of the summons and complaint had ever been filed and it appeared that the summons and complaint had not, in fact, been served. Accordingly, I issued an Order to plaintiff on August 26, 2009 directing that plaintiff show cause on or before October 26, 2009 why the action should not be dismissed for failure to serve the summons and complaint within the 120-day time limit established by Rule 4(m), Fed. R. Civ. P. Specifically, my August 26, 2009 Order provided:

Despite the fact that Rule 4(m), Fed. R. Civ. P., requires that the summons and complaint be served on all defendants no later than 120 days after the commencement of the action,

according to the Court's records, the defendant has not yet been served. Accordingly, pursuant to Federal Rule of Civil Procedure 4(m), it is hereby

ORDERED that plaintiff has until October 26, 2009 either to complete service of the summons and complaint on the defendants or to show good cause why such service has not been made. Failure to complete service or to show cause on or before October 26, 2009, **will** result in the issuance of a Report and Recommendation recommending the dismissal of this action.

(Emphasis in original.)

A copy of my August 26 Order was mailed to plaintiff at the address provided when she commenced this action -- the only address plaintiff ever provided to the Court. It has not been returned as undeliverable.

To date, plaintiff has not filed proof of service, has not explained why service has not been completed and has not contacted my chambers or the Court in any way. Accordingly, I respectfully recommend sua sponte that this action be dismissed on the ground that plaintiff has not completed service of the summons and complaint within the time permitted by Rule 4(m), Fed. R. Civ. P.

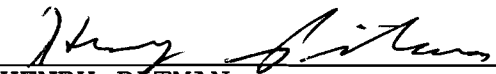
#### OBJECTIONS

Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from the date of this Report and Recommendation to file written objections. See also Fed. R. Civ. P. 6(a). Such objec-

tions (and responses thereto) shall be filed with the Clerk of the Court, with courtesy copies delivered to the chambers of the Honorable Sidney H. Stein, United States District Judge, Room 1010, 500 Pearl Street, New York, New York 10007 and to the chambers of the undersigned, Room 750, 500 Pearl Street, New York, New York 10007. Any requests for an extension of time for filing objections must be directed to Judge Stein. FAILURE TO OBJECT WITHIN TEN (10) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. Thomas v. Arn, 474 U.S. 140 (1985); United States v. Male Juvenile, 121 F.3d 34, 38 (2d Cir. 1997); I.U.E. AFL-CIO Pension Fund v. Hermann, 9 F.3d 1049, 1054 (2d Cir. 1993); Frank v. Johnson, 968 F.2d 298, 300 (2d Cir. 1992); Wesolek v. Canadair Ltd., 838 F.2d 55, 58 (2d Cir. 1988); McCarthy v. Manson, 714 F.2d 234, 237-38 & n.2 (2d Cir. 1983).

Dated: New York, New York  
November 2, 2009

Respectfully submitted,

  
HENRY PITMAN  
United States Magistrate Judge

Copy mailed to:

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